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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,907	03/22/2004	Michael I. Rosenfelt	1744-702USPT	2039
58687 7590 12/19/2008 DUBOIS, BRYANT, CAMPBELL & SCHWARTZ, LLP 700 LAVACA STREET SUITE 1300 AUSTIN, TX 78701				
EXAMINER				
LEE, JUSTIN YE				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
12/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,907

Applicant(s)

ROSENFELT ET AL.

Examiner

Justin Y. Lee

Art Unit

2617

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 17-19, 21-23 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-19, 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-10, 17 and 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the appeal brief filed on 9/9/08, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Alexander Eisen/

Supervisory Patent Examiner, Art Unit 2617.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Regarding claims 1-10 and 25-34, the phrase "at such time" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of

the claimed invention. See MPEP § 2173.05(d). Suggesting to change "at such time" to at a time when".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pickup et al. (US 2003/0050984 A1, hereinafter, Pickup) in view of Bennett et al. (US 2002/0194379 A1, hereinafter, Bennett).

Consider claim 17, Pickup discloses a method for intercepting and redirecting email messages to wireless devices (paragraph 57), comprising:

Redirecting, responsive to detection of an outage of a primary email system, email messages intended to be delivered to said primary email system to a backup system 5 (paragraph 57).

Pickup does not disclose the backup system can be a SMTP host and wherein said redirected email messages have a lower priority designation.

Bennett further discloses the backup system can be a SMTP host (paragraph 54, SMTP host can be a email server) and wherein said redirected email messages have a lower priority designation (paragraph 54, the message directed to the SMTP server are a lower priority message).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to utilize the teachings of Bennett into the teachings of Pickup for the purposes of providing a user with the ability to easily sort and categorize information in email message (paragraph 12) therefore to save time also to process low priority message in SMTP server for conserving resources.

Allowable Subject Matter

6. Claims 1-10 and 25-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
7. Claims 1-10, 18-19, 21-23, 25-34 are allowed.
8. The following is an examiner's statement of reasons for allowance:

Applicant's independent claims 1 and 25 are each drawn to a method and system for providing backup electronic messaging services to wireless devices during outages, comprising, sending email messages from a primary email system to a user's wireless device; when said primary email system is unavailable, redirecting said email

messages from said primary email system to a secondary email system and from said secondary email system to said user's wireless device; notifying said user that said email messages are available on said user's wireless device through said secondary email system at such time as said redirection of said email messages has been implemented; at such time as said primary email service becomes available, redirecting said email messages from said secondary email system to said primary email system and from said primary email system to said user's wireless device; notifying said user that said email messages are available on said user's wireless device through said primary email system at such time as said redirection of said email messages has been implemented; and synchronizing said email messages received on said secondary email system while said primary email system was unavailable with the messages in said primary email system. This particular combination of elements claimed as Applicant's invention is neither taught nor suggested by the prior art.

Applicant's independent claim 18 is drawn to a method for intercepting and redirecting email messages to wireless devices, comprising, changing a domain name system designating of a primary email system responsive to detection of an outage of the primary email system; directing inbound email messages to an alternate facility; and delivering said email messages from said alternate facility to said wireless devices; and notifying an intended recipient of said email messages that said messages are available on said recipient's wireless device through said alternate facility at such time as said redirection of said email messages has been implemented. This particular combination

of elements claimed as Applicant's invention is neither taught nor suggested by the prior art.

Applicant's independent claim 19 is drawn to a method for delivering backup message to wireless devices, comprising, maintaining a mapping of alternate email addresses of the wireless devices; delivering, via said alternate email address, the email messages to said wireless device responsive to detection of an outage of primary email system; wherein said step of delivering is performed during said outage of primary path for delivering said email messages; and notifying an intended recipient of said email messages that said messages are available on said recipient's wireless device through said alternate facility at such time as said redirection of said email messages has been implemented. This particular combination of elements claimed as Applicant's invention is neither taught nor suggested by the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sjolander et al. (US 6,587,959 B2) teaches a backup system for replacing a primary system while the primary system fails.

Tengwall et al. (US 2004/0078601 A1) teaches a backup system maintains a copy of the data in a primary system and act as the primary server when the primary server fails.

Bogantz et al. (US 6,347,322 B1) teaches a backup system maintains a copy of the data in a primary system and pickup a transaction that is not completed when the primary system fails and completes it.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Y. Lee whose telephone number is (571) 272-5258. The examiner can normally be reached on M - Thu 9:30 to 8:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Eisen can be reached on 5712727687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Justin Lee
AU 2617
12/10/08

/Alexander Eisen/

Supervisory Patent Examiner, Art Unit 2617